IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2006

CORAM

THE HON'BLE MR. A.P.SHAH, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE D.MURUGESAN

Writ Appeal No.453 of 2006
and
Writ Petition No.13791 of 2003

S.Tamilarasi ..Appellant/Third Party

Vs.

M.P.Ram Mohan Raja ..1st respondent/ Petitioner

The Secretary to Government,
Industries Department,
State of Tamil Nadu,
Fort St. George,
Chennai - 9. ..2nd respondent/ 1st respondent

The Director of Geology and Mining,
Chennai - 32. ..3rd respondent/ 2nd respondent

The District Collector,
Kamarajar District,
Virudhunagar. ..4th respondent/ 3rd respondent

The Assistant Director,
Mines & Geology,
Virudhunagar District. ..5th respondent/ 4th respondent

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Appeal under Clause 15 of the Letters Patent against the order of this Court dated 27.02.2004 made in W.P.M.P.No.1410 of 2004 in W.P.No.13791 of 2003.

Petition under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent in G.O.2(D)No.297, Industries (MMC-2) dated 08.10.1996, quash the same and direct the first respondent to consider the application of the petitioner dated 02.12.1996 for the grant of lease for quarrying jelly and rough stone over an extent of 3.64 hectares of land in survey

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No.782/2 and 2.36 hectares of land in survey No.777 of Ayyamkollankondan Village, Rajapalayam Taluk, Kamarajar District for a period of 20 years under Rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959.

For Appellant :: Mr.V.Sanjeevi

For respondent – 1/ Writ Petitioner :: Mr.K.Subramanian, Senior Counsel For Mr.Mohamed Shafi

For Respondents 2 to 5 :: Mr.Raja Kalifulla, Govt. Pleader

J U D G M E N T

(The Judgment of the Court was delivered by The Hon'ble The Chief Justice)

The writ petitioner had applied to the State Government in Industries Department on 2.2.1996 under rule 39 of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as 'the Ruels') for grant of quarry lease for quarrying jelly and rough stone for a period of 20 years from the poramboke lands over an extent of 3.64 hectares in survey No.782/2 and over an extent of 2.36 hectares in survey No.777/4A of Ayyamkollankondam Village, Rajapalayam Taluk, Kamarajar District. Rule 39 of the Rules conferred power on State Government to grant or renew quarry lease or permission in special cases. The validity of the said rule was upheld in Premium Granites Vs. State of Tamil Nadu, (1994) 2 SCC 691. The Supreme Court, however, made it clear that although a lease granted in exercise of power under rule 39 cannot per se be held invalid, whether the exercise of power under rule 39 in a given case has been properly made or not can always be questioned and if such a question is raised in a case, it will be open to the High Court to decide the question on merits. In the wake of the Supreme Court judgment in a batch of writ petitions viz., Writ Petition No.19868 of 1994, etc. batch this Court vide order dated 17.03.1995 directed the Government to dispose of the applications filed under rule 39 within twelve weeks from the date of the judgment.

2. The petitioner herein approached this Court in W.P.No.6931 of 1996 making grievance that his application under rule 39 was not disposed of and prayed for a direction to the Government to dispose of his application made under rule 39. By order dated 14.06.1996 passed on the said writ petition this Court directed the Government to consider the application of the petitioner and dispose of the same within a period of four weeks from the date of receipt of copy of the order and also directed the Government to maintain status quo in the meanwhile. However, on 27.06.1996 i.e., within a period of four weeks rule 39 itself was repealed by the Government. Consequently, the application of the petitioner came to be rejected vide order dated 08.10.1996. Subsequently, the District Collector put certain lands for auction in 2003. One of the two lands for which the application was made by the petitioner was also put to auction. At that

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stage, nearly after seven years, the petitioner filed the present writ petition seeking certiorarified mandamus to quash the order dated 08.10.1996 and to direct the first respondent to consider the application of the petitioner dated 02.02.1996 for the grant of lease for quarrying jelly and rough stone under rule 39 of the Rules.

3. The petition was admitted by the learned single Judge on 29.04.2003. By an interim order dated 27.02.2004 passed in W.P.M.P.No.1410 of 2004 the learned single Judge permitted the petitioner to carry on quarrying operation of jelly and rough stone in the said laid. The said order was challenged by the Government in Writ Appeal No.1750 of 2004 which came to be dismissed on 14.09.2004. Thereafter, a clarificatory order was passed by the learned single Judge against which also an appeal was preferred and that appeal was also dismissed. The interim order of the learned single Judge dated 27.02.2004 is now challenged in Writ Appeal No.453 of 2006 by a third party by name S.Tamilarasi alleging that taking advantage of the order of the learned single Judge the petitioner has unauthorisedly encroached upon the leasehold land granted in favour of the appellant and started quarrying operation in the said land.

4. By consent of the parties the writ petition itself along with the writ appeal is taken up for final hearing.

5. Mr.K.Subramanian, learned Senior Counsel appearing for the petitioner strenuously submitted that the impugned order passed by the first respondent, rejecting the petitioner's application dated 02.02.1996 for grant of lease for quarrying under rule 39 of the Rules on the ground that on the date of consideration of the application rule 39 was deleted is contrary to the decision rendered by the Division Bench of this Court in W.A.Nos.1547 to 1549 of 1994 decided on 17.07.1997. The learned Senior Counsel also placed strong reliance on the judgment of this Court in Tvl.Sundaram Granites Vs. Imperial Granites Ltd., 1997 (II) CTC 678. Relying upon the said judgments the learned Senior Counsel submitted that even though the petitioner has no vested right to grant of lease, he has a limited vested right to consider his application in accordance with rule as it existed on the day when he made the application or at least on the day when this Court passed the order directing the Government to dispose of his application within four weeks. It was submitted that this limited vested right could not be taken away by deleting the rules or amending the rules during the pendency of the application. In the alternative the learned Senior Counsel submitted that by the order of the Division Bench of this Court dated 17.03. 1995 the Government was directed to dispose of the application filed under rule 39 of the Rules within twelve weeks and since the Government had failed to act as per the said order of this Court it cannot take advantage of its own wrong by denying the right of the petitioner for consideration of his application in accordance with rule 39 as it existed at the relevant time. In support of this argument he also placed reliance on two reported judgments namely Watrap S.Subramanian Aiyar Vs. The United India Life Insurance Co. Ltd., Vol.55 MLJ 385 and VOICE Consumer Care Council Vs. State of Tamil Nadu, 2002 (3) CTC 1.

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6. We find absolutely no merit in any of the submissions of the learned Senior Counsel. The facts are not in dispute. Application under rule 39 was filed by the petitioner on 02.02.1996. That application was not decided by the Government. The petitioner, therefore, approached this Court in W.P.No.6931 of 1996 on which final order was passed on 14.06. 1996 whereby the Government was directed to consider the application and dispose of the same within four weeks from the date of receipt of a copy of the order. Before the expiry of the said period rule 39 itself came to be deleted from the Rules by the Government on 27.06.1996. It is well settled that no one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way by applying particular provisions. In the absence of any vested right in any one, an application for a lease has necessarily to be dealt with according to the rules in force on the date of disposal of the application despite the fact that there is a long delay since the making of the application. In this connection a reference may be made to the decision of the Supreme Court in State of Tamil Nadu Vs. Hind Stone, (1981) 2 SCC 205 where repelling the contention of the respondent that since the applications for grant of renewal of leases were made long prior to the date of G.O.Ms.No.1312 dated 02.12.1977, they should be dealt with as if Rule 8-C had not come into force, Chinnappa Reddy, J. observed as follows:

> "The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8 -C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rule in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms.No.1312 should be dealt with as if Rule 8-C did not exist". (emphasis supplied)

7. In P.T.R.Exports (Madras) Pvt. Ltd. Vs. Union of India, (1996) 5 SCC 268 the petitioners, who were exporters of ready-made garments, challenged the change in policy by way of writ petition inter alia on the ground that the Government had promised to grant 'MEE' and 'NQE' quotas

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for those who update their quality of products by purchasing new machines after expiry of 5 years life span or given promise that all those who performed their applications 'MEE' were entitled to 'NQE' quota and that, therefore, the respondents were estopped to resile from the promise made to them and they could not act in a way detrimental to their legitimate expectations. A three Judge bench of the Supreme Court negatived this challenge by holding as follows:-

"Para-4: An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the court that the refusal was vitiated by the above factors.

Para-5: It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilization of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the 'MEE' or 'NQE', nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the Scheme".

8. Thus, it would be seen that no applicant has a right, much less vested right to the grant of lease or licence. In the absence of such right the application will have to be dealt with according to the rules in force on the date of the disposal of the application. It is therefore impossible to accept the argument of the learned Senior Counsel that a vested right was created in favour of the petitioner on the date of the application and therefore, the application was liable to be considered on the basis of the law as it existed on the date of the application. The two decisions of this Court relied on by the learned Senior Counsel are of no

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assistance to him. In the first decision in the case of K.N.Solai Rajan (W.A.Nos.1547 to 1549 of 1994) the application for quarry lease was filed under rule 39 on 11.01.1989 and according to the petitioner therein the application was kept pending with ulterior motive to help the other third parties. The petitioner filed W.P.No.9101 of 1989 seeking directions to the Government to dispose of the application. The writ petition was ordered on 12.07.1989 directing the respondents to dispose of the application on merits within four weeks from the date of receipt of a copy of the order. However, the Government did not take care to pass orders within the time prescribed by this Court and delayed the matter for more than a year and half and ultimately rejected the application solely on the ground that by G.O.Ms.No.608, Industries (MMC-II) Department dated 02.09.1989 rule 8-A has been amended whereby the grant of quarry lease for black and coloured granite in Government poramboke lands shall only be through 'Tender System'. The learned single Judge distinguished the decision of the Supreme Court in the case of Hind Stone cited supra by holding that if the application had been disposed of within four weeks from the date of receipt of the order, G.O.Ms.No.608 dated 02.09.1989 would not have been in force and the application could have been dealt with under the old rules. This judgment of the learned single Judge was confirmed by the Division Bench. The decision has no application in the present case inasmuch as rule 39 came to be deleted within the period of four weeks fixed by this Court.

9. The second judgment relied on by the learned Senior Counsel in the case of Sundaram Granites cited supra arose in a peculiar set of facts. In that case both the petitioner and the 5th respondent therein made applications for grant of granite lease for the same survey number and in fact the application of the petitioner was earlier in point of time. The competent authorities granted the application of the 5th respondent without passing any order on the application made by the petitioner, and thereafter the application of the petitioner was rejected on the ground that the site was not available as it was already allotted to the 5th respondent. Allowing the appeal the Division Bench held that the State has to keep in view the public interest as well as the interest of the mineral department while granting the lease. On the principle of fairness the authority ought to have dealt with all the applications simultaneously for grant of lease by comparing the inter se merits of the claimants. Grant of lease without comparing the inter se merits of the applicants in itself can be termed as arbitrary and violative of Article 14 of the Constitution of India. It was held that the State cannot be permitted to deprive the petitioner from his right to be considered for grant of the State largess by competing with others and, therefore, both the applications were required to be considered afresh even if rule 39 was deleted from the statute. The facts of the said case are clearly distinguishable as in that case the Division Bench was mainly concerned with the violation of Article 14 of the Constitution of India.

10. Lastly, the submission that the earlier order of the Division Bench dated 17.03.1995 confers a vested right on the petitioner is required to be stated only for rejection. In the first place the

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petitioner herein was not a party to the batch of writ petitions which was disposed of vide order dated 17.03.1995. Secondly, the petitioner approached this Court by filing W.P.No.6931 of 1996 with a specific prayer to direct the authorities to decide his application expeditiously and on that petition this Court passed an order to dispose of the petitioner's application within four weeks. Rule 39 came to be deleted within the said period of four weeks and therefore, the petitioner is clearly not entitled to any relief. The writ petition is also liable to be dismissed on the ground of gross delay and laches. The impugned order was passed on 08.10.1996 and the petitioner had chosen to approach this Court only in 2003. In the result the writ petition is liable to be dismissed and is hereby dismissed with costs. Connected WVMP Nos.1208 and 1209 of 2006 are closed.

11. So far as writ appeal is concerned the State Government has clarified in its counter affidavit that the appellant has been granted a quarry lease through tender-cum-auction for quarrying roughstone and jelly under rule – 8 of the Rules in the same survey number of 777/4A measuring an extent of 5.00.o Hectares of Ayankollankondan Village, Rajapalayam Taluk on the northern side of the hillock and one part of the lease area is marked in the sketch having 400 mts length in east-west direction and 50 mts width towards south and an another part is marked in the sketch on the western up hill side with 300 mts length and 100 mts width towards south of the up hill side. The total extent of the SF No.777/4A is 28.22.5 Hectares. Out of the total extent of 28.22.5 Hectares an extent of 2.36.0 Hectares has been allotted to Thiru M.P.Rammohan Raja on the southern side of the hillock as per interim order and an extent of 5.00.0 Hectares had been leased out to Tmt.S.Tamilarasi on the northern side. In view of this clarification no orders are necessary in the writ appeal. Learned counsel for the appellant stated that in view of the interim order passed by this Court the appellant was prevented from quarrying the land for a period of 108 days and she should be compensated for the said period. The appellant is at liberty to approach the authorities with appropriate requisition and in case such request is made the authorities are directed to consider the same sympathetically and pass appropriate orders in accordance with law.

12. In pursuance of the interim order passed by this Court the writ petitioner has deposited certain amounts with the State Government. The lease amount for the period for which the petitioner quarried the land may be deducted in accordance with the rules, and the balance amount, if any, subject to verification, be returned to the petitioner within a period of eight weeks from today.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ns/sm

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2. The Director of Geology and Mining,
Chennai - 32.

3. The District Collector,
Kamarajar District,
Virudhunagar.

4. The Assistant Director,
Mines & Geology,
Virudhunagar District.

+ 1 CC To Mr. V.Sanjeevi, Advocate SR NO.30713
+ 2 CCs to the Government Pleader SR NO 30360, 30361
+ 2 CCs To Mr. M.Mohammed Shahi, Advocate SR NO. 30249, 30158

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